leave to defend the action, because their Lordships have reached a decision on the merits of the defence and nothing remains to be tried.

Their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal ought to be dismissed. The appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Douglas Goldberg & Co.; Coward Chance.*

SINGAPORE REPORTS

"BRUNEI 602", OWNERS OF CARGO ABOARD M.V. v. M.V. "HAI HIN 28", OWNERS OF, & ANOR.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) February 17, 1984]
[Singapore – Civil Appeal No. 42 of 1983]

Shipping Law – Action in rem – Cargo lost in sea – Claim against owners of tug and owners of barge – Both tug and barge owned by same company – Arrest of tug – Whether plaintiffs may arrest sister ship – Plaintiffs not allowed to circumvent "single arrest rule"

Jurisdiction – Action in rem – Arrest of ship – Jurisdiction of Court is invoked when writ served on one of named ships and warrant of arrest was executed – Plaintiff could not go against other named sister ships – High Court Admiralty Jurisdiction Act (Cap. 6), ss. 3(1) & 4(4)

Practice & Procedure – Writ in rem – Arrest of ship – "Single arrest rule" applies.

Under a bill of lading dated May 10, 1981, the plaintiffs shipped 390 pieces of coal tar enamel coated pipes on board the ship "Brunei 602" towed by the tug "Hai Hin 28" at the Port of Singapore for carriage and delivery in Indonesia. The plaintiffs were the owners of the said cargo and both the dumb barge and the tug were at all material times owned by Seng Leong Seong Shipping Enterprises (Pte.) Ltd. of Singapore. On May 29, 1981 the said cargo fell into the sea off the coast of Kalimantan and were totally lost. The plaintiffs subsequently issued a writ against the first defendant as the owners of the tug "Hai Hin 28" and the second defendants as the owners of the barge "Brunei 602".

The tug was arrested on February 3, 1983. The first and second defendants entered conditional appearance to the writ on February 11, 1983. On February 18, 1983 they filed an application for an order that the proceedings against the second defendants be set aside. The learned Deputy Registrar allowed the application. The plaintiffs' appeal against the said order was dismissed by Abdul Wahab Ghows J. The plaintiffs appealed against the decision of Abdul Wahab Ghows J.

Held, dismissing the plaintiffs' appeal: (1) in the present case the action pursued against the owners of the tug and the barge is one *in rem* and the vital question herein is therefore one of determining jurisdiction under the High Court (Admiralty Jurisdiction) Act and not of determining liability on a contract of affreightment in the construing of which the object must be to arrive at the real intention of the parties to the contract;

(2) in the present case it is clearly an abuse of the process of the court to allow the plaintiffs to circumvent the single arrest rule under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) by naming a sister ship as different defendants in the same writ, so as to be in a position to arrest both the offending and sister ship;

(3) the plaintiffs should have issued their writ *in rem* against the owners of the tug or vessel "Hai Hin 28" and the barge or vessel "Brunei 602" as the defendants. They could then arrest the tug or the barge as either the offending ship or the sister ship and delete the unarrested ship from the writ. If the plaintiffs eventually succeeded in proving liability against one of the two ships or both, they could execute the judgment against any of the property of the defendants including the unarrested and other ships then belonging to the defendants.

Cases referred to:

(1) *The Banco* [1971] 1 All E.R. 524.
(2) *The "Permina Samudra XIV"* [1978] 1 Lloyd's Rep. 315; [1977] 1 M.L.J. 47.
(3) *Sacremento Navigation Co.* v. *Milton H. Saly* 127 A.M.C. 397.

COURT OF APPEAL.

A. Reddy for the appellants.

G. Pannirselvam for the respondents.

Cur. Adv. Vult.

Rajah J. (delivering the judgment of the Court): This appeal arises from an application by the 1st and 2nd Respondents herein (the 1st and 2nd Defendants) in an Admiralty action *in rem* to set aside proceedings against the 2nd Defendants on the following grounds:

(a) that the Appellants (Plaintiffs) having invoked the Admiralty jurisdiction against a vessel, namely the tug 'Hai Hin 28', belonging to the 1st Defendants and arrested it, are thereafter precluded from proceeding against another vessel (in the instant case the dumb barge "Brunei 602") owned by the 1st Defendants;

(b) that of duplicity of the claim against the same Defendants.

The relevant facts may be stated briefly

On or about May 10, 1981 there were shipped under a Bill of Lading of the same date 398 pieces of coal tar enamel coated pipes in three different sizes "on board the ship 'Brunei 602' towed by the tug 'Hai Hin 28' in or at the Port of Singapore" (as stated in the said Bill of Lading) for carriage to and delivery at Handil II Samarinda, Indonesia. The Plaintiffs were at all material times the owner of the said goods. These goods had been laden aboard the dumb barge 'Brunei 602' and it was to be towed to its destination by the tug. Both the dumb barge and the tug were at all material times owned by Seng Leong Seong Shipping Enterprises (Pte.) Ltd. of Singapore. On May 29, 1981 the goods, whilst being so transported to their destination, fell into the sea off the coast of Kalimantan near Tanjong Puting and were totally lost.

It was in these circumstances that on June 26, 1982 the Plaintiffs issued their writ in Admiralty in rem No 487 of 1982 against the 1st Defendants as the owners of the tug 'Hai Hin 28' and the 2nd Defendants as the owners of the barge 'Brunei 602'. The indorsement to the Writ reads: "The Plaintiffs, as owners of goods and/or holders of the Bill of Lading shipped on board the 2nd Defendants' vessel 'Brunei 602' for carrying from Singapore to Balikpappan, claim against the 1st Defendants or alternatively the 2nd Defendants for negligence and/or breach of contract and/or breach of duty in respect of loss to the said goods during the said voyage."

The tug was arrested on February 3, 1983. The 1st and 2nd Defendants entered conditional appearance to the Writ on February 11, 1983 without prejudice to their applying to set aside the Writ or service thereof, and, accordingly, on February 18, 1983 they filed an application by way of summons for an order that the proceedings against the 2nd Defendants be set aside on the grounds as hereinbefore stated. The application was heard before the learned Deputy Registrar who acceded to the application and ordered that all proceedings against the 2nd Defendants be set aside. The Plaintiffs appealed against his Order. The appeal was heard before Abdul Wahab Ghows J. who dismissed the appeal.

The Plaintiffs now appeal against the decision of Abdul Wahab Ghows J.

The Defendants do not dispute that the claim of the Plaintiffs for the loss of the said goods is within the listed provisions of section 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap.6) (the Act), but they contend, the tug having been arrested on the February 3, 1983, the Plaintiffs cannot, thereafter, proceed against and arrest any other ship belonging to the 1st Defendants, in the instant case the dumb barge 'Brunei 602'. They rely on *"The Banco"*(1) and on section 4(4) of the Act which reads:

"4(4). In the case of any such claim as is mentioned in paragraphs (d) to (g) of subsection (1) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against –

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

The Banco case *(supra)* decides that a claimant may in his Writ name any number of ships belonging to the owner of the offending ship, but, having served the Writ on and arrested one of the several ships so named, the claimant must then, before he proceeds further with the action, take steps to have the other named ships struck off the Writ. The Plaintiffs sought to distinguish the *Banco* case from the instant case by saying that in the former there was only one claim and one cause of action. They relied on the judgment of this Court in the *Permina Samudra XIV*[2] which decides that:

(a) the expressions "claim" and "cause of action" in section 4(4) of the Act had the same meaning; and the arrests of Permina 108 and Permina Samudra XIV were in respect of two claims each of which arose out of the list in section 3(1) of the Act and each of which was founded on a different cause of action and the Appellants were entitled to arrest Permina Samudra XIV;

(b) that on the facts there were two separate writs based on separate and distinct causes of action and each writ named only one ship and had been served on only one ship, the ship named in the writ.

The Plaintiffs contend that on the facts of the instant case they have three separate claims because of the three different sizes of the pipes and that each one of these three separate claims is based on a separate and distinct cause of action. We do not agree. The Plaintiffs have on the facts of the case only one claim within the meaning of section 3(1) of the Act in respect of the loss of the 398 coal tar enamel coated pipes, which were owned by one person and shipped under one Bill of Lading and lost at sea in one mishap on May 29, 1981, while being towed to Samarindo.

It was perhaps as a last resort that Plaintiffs' counsel suggested, during the course of the hearing, that we should take cognisance of the commercial realities of a contract of carriage performed by a tug and a dumb barge in tow. In the instant case, counsel for the Plaintiffs says there was a joint operation in the carriage of goods, the dumb barge laden with the cargo and the tug supplying the motive power to transport it. In support the Plaintiffs cite an American case, namely the *Sacremento Navigation Company* v. *Milton H. Sally*[3], as of persuasive value.

The appeal in the American case involved the construction and application of section 3 of the Harter Act 1893. The Harter Act deals with certain aspects of the carriage of goods by sea and section 3 thereof deals with "exempting shipowners from liability for consequences of faults or errors in navigation or in the management of the vessel, as well as of certain perils, in cases where they have exercised due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied". (*Carver* on "Carriage by Sea" 13th Edition Vol. 1 para 480). This case decided:

(1) that "where cargo on a towed barge is lost by the negligent navigation of a tug, the combination of the vessel and tug is the 'vessel transporting' the cargo *within the meaning of the Harter Act*" (emphasis ours), and

(2) that where cargo on a towed barge is lost by the negligent navigation of a tug which belongs to the barge owner, the Harter Act protects the owner of the barge from liability, since the combination of barge and tug is to be considered as one vessel.

It is to be noted that this case relates to a contract of a freightment and that the action pursued there was one *in personam* against the barge owners. In the present case the action pursued against the owners of the tug and the barge is one *in rem* and the vital question herein is therefore one of determining jurisdiction under the High Court (Admiralty Jurisdiction) Act and not of determining liability on a contract of affreightment in the construing of which the object must be to arrive at the real intention of the parties to the contract.

In our judgment it is now settled law that when a plaintiff brings an action *in rem* against more than one ship owned by a defendant, the jurisdiction of the Court is invoked when the writ is served on one of the named ships and the warrant of arrest is executed. That having been done, the plaintiff cannot go against the other named sister ships and should strike them out of the writ. If he does not do so, the Court, on the application of the defendant, will strike the other

named sister ships out of the writ and set aside service of the writ and warrant of arrest on the other named sister ships. However, if the plaintiff eventually obtains judgment against the defendant, he will at that stage, be able to execute the judgment against any of the property of the defendant, including his other ships, then belonging to him (see the *"Banco" supra*).

In the present case it is, in our opinion, also clearly an abuse of the process of the Court to allow the Plaintiffs to circumvent the single arrest rule under section 4(4) of the Act by naming a sister ship (whether responsible or not for the loss or damage) as different defendants in the same writ, so as to be in a position to arrest both the offending and sister ship. The Plaintiffs should have issued their writ *in rem* against the owners of the tug of vessel "Hai Hin 28" and the barge or vessel "Brunei 602" as the defendants. They could then arrest the tug or the barge as either the offending ship or the sister ship and delete the unarrested ship from the writ. If the Plaintiffs eventually succeeded in proving liability against one of the two ships or both, they could execute the judgment against any of the property of the defendants including the unarrested and other ships then belonging to the defendants.

For these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Niru & Co.; Drew & Napier.*

ROBERT TAN & ORS. v. TOMMY TAN & ANOR.

[O.C.J. (Rajah J.) February 28, 1984]
[Singapore – Civil Suit No. 84 of 1979]

Probate & Administration – Will – Transfer of shares to executor/defendant as gift – Gift perfected by transfer before death of deceased – Allegation of fraud dismissed

Shares – Transfer of – Shares valid notwithstanding not actually signed on date shown on share transfer.

The deceased, Tan Jim Lay, aged 79 died on July 19, 1974. He appointed the first defendant the sole executor and trustee of his Last Will and Testament dated June 8, 1974. It was not disputed that from 18th July until his death, the deceased was in a coma. Probate of the said Will was granted to the first defendant on May 7, 1975.

It was clear from the evidence that the deceased had, for some time prior to his death, been desirous of transferring his shareholding in the Company by way of gift to the first defendant. In pursuance of such desire, in 1973 the deceased executed a share transfer in blank in the first defendant's favour. On July 18, 1974 a resolution allowing "the transfer of 1,000 shares of $100/- each fully paid in this Company from Mr. Tan Jim Lay to Tommy Tan" was approved and signed by the directors of the Company. The Transfer was dated July 18, 1974, stamped and entered on the same day in the Register of Members of the Company.

The first, second and third plaintiffs, beneficiaries of the Will claimed that the share transfer was false as the deceased could not have signed it on July 18, 1974 as he was on that day in a state of coma and had died without regaining consciousness on 19th July. They therefore claimed that the transfer was void and sought for an order that the Company register the deceased's estate as the owner of the said 1,000 shares.

Before the action came to be tried the plaintiffs' solicitors agreed that action would not be proceeded against the second defendants on the latter's undertaking that they would abide by the Court's decision.

Held, dismissing the plaintiffs' claim: (1) it is not necessary for a share transfer to be valid for it to be actually signed on the date shown on the share transfer;

(2) the gift of the said 1,000 shares to the first defendant had, before the death of the deceased, been perfected by the transfer to him of these shares and there was nothing improper or fraudulent in such transfer.

Cases referred to:

(1) *Maynard* v. *The Consolidated Kent Collieries Corporation*, Ltd. [1903] 2 K.B. 121.
(2) *Conybear* v. *British Briquettes Ltd.* [1937] 4 All E.R. 191.
(3) *Hughes* v. *Senaor* (1869) 18 W.R. 108.
(4) *Rogers* v. *Powell* (1869) 18 W.R. 282.
(5) *Morley* v. *Finney* (1870) 18 W.R. 490.
(6) *Hill* v. *Wilson* (1873) 8 Ch. App. 888.
(7) *Whittaker* v. *Whittaker* (1882) 21 Ch. D. 657.
(8) *Finch* v. *Finch* (1883) 23 Ch. D. 267, C.A.
(9) *Coultwas* v. *Swan* (1870) 22 L.T. 539.
(10) *Coultwas* v. *Swan* (1870-1871) 19 W.R. 485 C.A.

CIVIL SUIT.

Freddy Yin for the plaintiffs.
Joseph Grimberg for the defendants.

Cur. Adv. Vult.

Rajah J.: Tan Jim Lay (the Deceased), aged 79, died on July 19, 1974 at 2.00 am having made his Last Will and Testament, dated June 8, 1974, whereby he appointed his sixth son Tommy Tan, the 1st Defendant herein, the sole executor and trustee thereof. It is not disputed that as from the 18th July until his death the Deceased was in a coma. Probate of the said Will was granted to